

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

## CRAIG ALLEN DOWNES,

No. 2:15-CV-00092-JTR

Plaintiff,

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

CAROLYN W. COLVIN,  
Commissioner of Social Security,

Defendant.

**BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF No. 15, 17. Attorney Dana C. Madsen represents Craig Allen Downes (Plaintiff); Special Assistant United States Attorney Daphne Banay represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 14. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

## JURISDICTION

Plaintiff filed applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) on December 20, 2011, alleging disability since April 26, 2011, due to post-traumatic stress disorder (PTSD), depression,

1 anxiety, degenerative disc disease, traumatic brain injury, hallucination,  
2 nightmares, and paranoia. Tr. 179-194, 212. The applications were denied  
3 initially and upon reconsideration. Tr. 116-119, 126-137. Administrative Law  
4 Judge (ALJ) Marie Palachuk held a hearing on November 5, 2013, at which  
5 Plaintiff, represented by counsel, medical expert (ME) Richard Alan Hutson, M.D.,  
6 ME Joseph Cools, Ph.D., and vocational expert (VE) Sharon Walter testified. Tr.  
7 29-73. The ALJ issued an unfavorable decision on December 27, 2013. Tr. 11-23.  
8 The Appeals Council denied review on February 9, 2015. Tr. 1-3. The ALJ's  
9 December 27, 2013, decision became the final decision of the Commissioner,  
10 which is appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff  
11 filed this action for judicial review on April 3, 2015. ECF No. 1, 3.

## 12 **STATEMENT OF FACTS**

13 The facts of the case are set forth in the administrative hearing transcript, the  
14 ALJ's decision, and the briefs of the parties. They are only briefly summarized  
15 here.

16 Plaintiff was 29 years old at the alleged date of onset. Tr. 188. Plaintiff  
17 completed the twelfth grade in 2000. Tr. 213. Plaintiff served in the U.S. Navy  
18 and after his discharge worked as customer service representative, stocker, general  
19 laborer, letter carrier, security guard, and maintenance worker. Tr. 47-51. He  
20 stopped working on April 26, 2011, after being terminated because he was not able  
21 to perform the required job duties. Tr. 212.

22 After applying benefits, Plaintiff completed a Function Report in which he  
23 stated he could wash the dishes, do the laundry, walk, drive, and shop. Tr. 241-  
242.

25 Plaintiff had a CT and a MRI in August of 2013 showing a slight leftward  
26 rotation and displacement of the C1 relative to C2 and the skull base without  
27 evidence of an acute fracture. Tr. 837, 839. He was admitted to Veteran's  
28 Administration inpatient psychological unit in July of 2011 for 5 days. Tr. 349-

1 354, 408-410, 899. Afterwards, he attended individual and group counseling. Tr.  
2 370-721, 757-895. In October of 2013, he was evaluated by John F. Arnold,  
3 Ph.D., who diagnosed him with major depression, PTSD, pain disorder with both  
4 psychological factors and a general medical condition, chronic cannabis use, rule  
5 out a cognitive disorder, and avoidant personality disorder with borderline and  
6 depressive features. Tr. 900. Additionally, Dr. Arnold opined Plaintiff had eight  
7 moderate, seven marked, and one severe mental functional limitations. Tr. 901-  
8 903.

9 At the administrative hearing, Plaintiff described limited use of his left hand,  
10 pain in his neck, shoulders, and low back, depression, anxiety, and a history of a  
11 head injury. Tr. 51, 59. He stated that these impairments resulted in limited range  
12 of motion of his neck, decreased hearing, irritability, pain, tingling, and numbness  
13 in the bilateral fingers, dropping items when using the left hand, limited range of  
14 motion in the left shoulder, spasms in the low back, migraine headaches,  
15 nightmares, flashbacks, difficulty remembering, and blackouts. Tr. 57-63. He  
16 further testified he could do the dishes using a dishwasher and “very limited”  
17 laundry, but not the vacuuming. Tr. 64.

#### 18 **STANDARD OF REVIEW**

19 The ALJ is responsible for determining credibility, resolving conflicts in  
20 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
21 1039 (9th Cir. 1995). The Court reviews the ALJ’s determinations of law de novo,  
22 deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d  
23 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is  
24 not supported by substantial evidence or if it is based on legal error. *Tackett v.*  
25 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as  
26 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put  
27 another way, substantial evidence is such relevant evidence as a reasonable mind  
28 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402

1 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational  
 2 interpretation, the court may not substitute its judgment for that of the ALJ.  
 3 *Tackett*, 180 F.3d at 1097. Nevertheless, a decision supported by substantial  
 4 evidence will be set aside if the proper legal standards were not applied in  
 5 weighing the evidence and making the decision. *Brawner v. Secretary of Health*  
 6 and *Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence  
 7 supports the administrative findings, or if conflicting evidence supports a finding  
 8 of either disability or non-disability, the ALJ's determination is conclusive.  
 9 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

#### 10 **SEQUENTIAL EVALUATION PROCESS**

11 The Commissioner has established a five-step sequential evaluation process  
 12 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),  
 13 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one  
 14 through four, the burden of proof rests upon the claimant to establish a *prima facie*  
 15 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This  
 16 burden is met once a claimant establishes that physical or mental impairments  
 17 prevent him from engaging in his previous occupations. 20 C.F.R. §§  
 18 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the  
 19 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that  
 20 (1) the claimant can make an adjustment to other work, and (2) specific jobs exist  
 21 in the national economy which the claimant can perform. *Batson v. Comm'r of*  
 22 *Soc. Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If the claimant cannot make  
 23 an adjustment to other work in the national economy, a finding of "disabled" is  
 24 made. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

#### 25 **ADMINISTRATIVE DECISION**

26 On December 27, 2013, the ALJ issued a decision finding Plaintiff was not  
 27 disabled as defined in the Social Security Act.

28 At step one, the ALJ found Plaintiff had not engaged in substantial gainful

1 activity since April 26, 2011, the alleged date of onset. Tr. 13.

2 At step two, the ALJ determined Plaintiff had the following severe  
3 impairments: degenerative disc disease of the cervical spine; carpal tunnel  
4 syndrome left greater than right; depressive disorder; PTSD; impulse control  
5 disorder; dependent personality disorder; and substance abuse, cannabis. Tr. 13-  
6 14.

7 At step three, the ALJ found Plaintiff did not have an impairment or  
8 combination of impairments that met or medically equaled the severity of one of  
9 the listed impairments. Tr. 14-16.

10 At step four, the ALJ assessed Plaintiff's residual function capacity (RFC)  
11 and determined he could perform a range of light work:

12 [E]xcept he can occasionally bend, balance, stoop, crouch, crawl, kneel,  
13 climb ramps and stairs, but never climb ladders, ropes of [sic] scaffolds;  
14 he can frequently push and pull and reach overhead with left upper  
15 extremities; he can frequently perform actions requiring handling and  
16 feeling with bilateral hands; he should avoid frequent exposure to  
17 extreme temperatures, wetness, humidity, vibration and all exposure to  
18 hazards; he can understand, remember and carry out simple, routine and  
19 repetitive tasks; he can have brief, infrequent and superficial interaction  
20 with the public, supervisors and coworkers; he works best dealing with  
things rather than people; and he can tolerate no more than seldom  
change in work routine.

21 Tr. 16. The ALJ found Plaintiff was able to perform his past relevant work as a  
22 sorter/pricer. Tr. 23.

23 Thus, the ALJ determined Plaintiff was not under a disability within the  
24 meaning of the Social Security Act at any time from April 26, 2011, through the  
25 date of the ALJ's decision, December 27, 2013. Tr. 23.

## 26 ISSUES

27 The question presented is whether substantial evidence supports the ALJ's  
28 decision denying benefits and, if so, whether that decision is based on proper legal

1 standards. Plaintiff asserts the ALJ erred by (1) failing to properly consider  
2 Plaintiff's credibility, and (2) failing to properly weigh the opinion of the  
3 examining psychologist.

## 4 DISCUSSION

### 5 A. Credibility

6 Plaintiff contests the ALJ's adverse credibility determination in this case.  
7 ECF No. 15 at 13-18. The ALJ found Plaintiff less than fully credible concerning  
8 the intensity, persistence, and limiting effects of his symptoms. Tr. 17, 19. The  
9 ALJ reasoned that Plaintiff was less than fully credible because his symptom  
10 reporting was contrary to (1) the objective medical evidence, (2) his activities of  
11 daily living (ADL), and (3) his conservative mental health treatment. Tr. 19-20.

12 It is generally the province of the ALJ to make credibility determinations,  
13 *Andrews*, 53 F.3d at 1039, but the ALJ's findings must be supported by specific  
14 cogent reasons, *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent  
15 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's  
16 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d  
17 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).  
18 "General findings are insufficient: rather the ALJ must identify what testimony is  
19 not credible and what evidence undermines the claimant's complaints." *Lester*, 81  
20 F.3d at 834.

#### 21 1. Contrary to the objective medical evidence

22 The ALJ's first reason for finding Plaintiff less than credible, that Plaintiff's  
23 symptoms were not supported by objective medical evidence, Tr. 19, is by itself,  
24 not a specific, clear, and convincing reason to undermine Plaintiff's credibility.  
25 The objective medical evidence is a "relevant factor in determining the severity of  
26 the claimant's pain and its disabling effects," but it cannot be the sole reason the  
27 ALJ provides for rejecting Plaintiff's credibility. *Rollins v. Massanari*, 261 F.3d  
28 853, 857 (9th Cir. 2001).

1       The ALJ's determination that Plaintiff's symptom reports were not  
2 supported by the objective evidence is supported by the record. The ALJ makes  
3 multiple citations to the record showing a lack of evidence to support the severity  
4 alleged: an August 2013 CT of the cervical spine showed only a slight rotation and  
5 displacement of the C1 relative to C2, an MRI showed no significant soft tissue  
6 edema, and a November 2012 report stated Plaintiff refused to admit his cervical  
7 range of motion improved with stretching and he lay down after claiming he could  
8 not due to back pain. Tr. 18. Additionally, the ALJ made repeated citations to the  
9 record showing Plaintiff's mental health symptoms were not as severe as alleged:  
10 an August 4, 2011, ER trip noted his description of past traumas as "dramatic and  
11 energetic," group therapy records showed symptoms were improving, and Michael  
12 Brown, Ph.D., concluded that Plaintiff's mental health impairments were non-  
13 severe after reviewing the records. Tr. 20. As such, the evidence in the record  
14 supports the ALJ's determination.

15       While this reason on its own is not sufficient to support a credibility  
16 determination, when combined with the ALJ's third reason, it further supports the  
17 ALJ's finding that Plaintiff is less than fully credible.

18       **2. Contrary to ADLs**

19       The ALJ's second reason for finding Plaintiff less than credible, that  
20 Plaintiff's activities cast doubt on his alleged limitations, Tr. 19, is a not specific,  
21 clear and convincing reason to undermine Plaintiff's credibility.

22       The ALJ noted that Plaintiff "does dishes, laundry and goes out alone; he  
23 could walk and drive an automobile. He could shop in stores for basic hygiene,  
24 clothing and food items." Tr. 19. Based on these ADLs, the ALJ determined that  
25 Plaintiff "clearly and consistently performs physical activities that are well within  
26 the reduced light work level." *Id.*

27       A claimant's daily activities may support an adverse credibility finding if (1)  
28 the claimant's activities contradict his other testimony, or (2) "the claimant is able

1 to spend a substantial part of his day engaged in pursuits involving performance of  
2 physical functions that are transferable to a work setting.” *Orn v. Astrue*, 495 F.3d  
3 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989)).  
4 “The ALJ must make ‘specific findings relating to [the daily] activities’ and their  
5 transferability to conclude that a claimant’s daily activities warrant an adverse  
6 credibility determination.” *Orn*, 495 F.3d at 639 (quoting *Burch v. Barnhart*, 400  
7 F.3d 676, 681 (9th Cir. 2005)).

8 Here, the ALJ did not find that Plaintiff’s ADLs were inconsistent with his  
9 testimony, but were instead found they were transferable to a work setting. Tr. 19.  
10 While Plaintiff may be able to do housework, walk, drive, and go shopping there is  
11 no evidence to support that these activities are transferable to a work setting or  
12 proof that he spent a substantial part of his day engaged in transferable skills. *See*  
13 *Orn*, 495 F.3d at 639; *Fair*, 885 F.2d at 603 (one does not have to be utterly  
14 incapacitated to be eligible for benefits).

15 As such, this is not a specific, clear and convincing reason supported by  
16 substantial evidence to find Plaintiff less than fully credible.

### 17       **3.      Contrary to Conservative Treatment**

18       The ALJ found Plaintiff less than fully credible because “he has undergone  
19 only conservative treatment with antidepressant medication and group therapy.”  
20 Tr. 20. Conservative treatment can be “sufficient to discount a claimant’s  
21 testimony regarding [the] severity of an impairment.” *Parra v. Astrue*, 481 F.3d  
22 742, 751 (9th Cir. 2007). Plaintiff asserts that the ALJ is expecting Plaintiff to  
23 seek treatment beyond that prescribed by his doctors. But, a review of the record  
24 shows that during the relevant time period, Plaintiff was resistant to more  
25 aggressive treatment, such as anti-depressants. Tr. 701, 758, 774, 841, 881.  
26 Therefore, there is substantial evidence in the record to support the ALJ’s  
27 determination. As such, this is a specific, clear and convincing reason to find  
28 Plaintiff less than fully credible.

1       In conclusion, the ALJ provided specific, clear and convincing reasons to  
 2 support her determination that Plaintiff was less than fully credible. *See Carmickle*  
 3 *v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 115, 1163 (9th Cir. 2008) (upholding an  
 4 adverse credibility finding where the ALJ provided four reasons to discredit the  
 5 claimant, two of which were invalid); *Batson*, 359 F.3d at 1197 (affirming a  
 6 credibility finding where one of several reasons was unsupported by the record);  
 7 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) (an error is harmless  
 8 when “it is clear from the record that the . . . error was inconsequential to the  
 9 ultimate nondisability determination”).

10      **B. Evaluation of Medical Evidence**

11       Plaintiff argues the ALJ failed to properly consider and weigh the medical  
 12 opinion of examining physician, Dr. Arnold. ECF No. 15 at 18-20.

13       The ALJ gave “very little weight” to the opinion of Dr. Arnold because (1) it  
 14 was not supported by the objective medical evidence, (2) it was not supported by  
 15 Dr. Arnold’s evaluation report, (3) it was a standardized check-the-box form, (4) it  
 16 was inconsistent with Plaintiff’s ADL, (5) the evaluation took place five days prior  
 17 to the hearing at the request of Plaintiff’s attorney, and (6) it did not relate the  
 18 opinion back to the alleged date of onset. Tr. 21.

19       In weighing medical source opinions, the ALJ should distinguish between  
 20 three different types of physicians: (1) treating physicians, who actually treat the  
 21 claimant, (2) examining physicians, who examine but do not treat the claimant, and  
 22 (3) nonexamining physicians who neither treat nor examine the claimant. *Lester*,  
 23 81 F.3d at 830. The ALJ should give more weight to the opinion of a treating  
 24 physician than to the opinion of an examining physician. *Orn*, 495 F.3d at 631.  
 25 The ALJ should give more weight to the opinion of an examining physician than to  
 26 the opinion of a nonexamining physician. *Id.*

27       When an examining physician’s opinion is not contradicted by another  
 28 physician, the ALJ may reject the opinion only for “clear and convincing” reasons.

1 *Lester*, 81 F.2d at 830. When an examining physician's opinion is contradicted by  
2 another physician, the ALJ is only required to provide "specific and legitimate  
3 reasons" for rejecting the opinion. *Id.* at 830-831. Both Plaintiff and Defendant  
4 agree that the specific and legitimate standard applies in this case. ECF No. 15 at  
5 18; ECF No. 17 at 12.

6 The specific and legitimate standard can be met by the ALJ "setting out a  
7 detailed and thorough summary of the facts and conflicting clinical evidence,  
8 stating [her] interpretation thereof, and making findings." *Magallanes v. Brown*,  
9 881 F.2d 747, 751 (9th Cir. 1989). The ALJ cannot just offer her conclusions; she  
10 must set forth her own interpretations and explain why they, rather than the  
11 doctors', are correct. *Embrey v. Bowen*, 849 F.2d 418, 421-422 (9th Cir. 1988).

12 First, the ALJ found that Dr. Arnold's opinion was inconsistent with the  
13 medical record as a whole because "the significant or marked degree of limitation  
14 [Dr. Arnold] opined are not reflected elsewhere in the medical record." Tr. 21.  
15 Inconsistency with the majority of objective evidence is a specific and legitimate  
16 reason for rejecting a physician's opinions. *Batson*, 359 F.3d at 1196. In  
17 challenging this finding, Plaintiff asserts that the ALJ ignored the medical evidence  
18 that actually supports Dr. Arnold's decision. ECF No. 15 at 19.

19 There is evidence to support the ALJ's determination, and the Court is not  
20 permitted to insert its own resolution of conflicting evidence in place of the ALJ's  
21 judgment. *See Sprague*, 812 F.2d at 1229-1230. Here, the ALJ set forth a  
22 summary of the medical evidence along with a summary of Dr. Arnold's  
23 evaluation and subsequent opinion. Tr. 16-21. In her decision, the ALJ considered  
24 evaluation notes showing Plaintiff's symptoms were improving as well as the  
25 opinions of Michael Brown, Ph.D., who concluded Plaintiff's impairments were  
26 not severe, and Joseph Cools, Ph.D., who recognized some limitations but at a  
27 much lower severity. Tr. 20, 22. Therefore, the ALJ's finding that the significant  
28 or marked degree of limitation that Dr. Arnold opined is not reflected in the record

1 is supported by substantial evidence and meets the specific and legitimate standard.

2 Second, the ALJ found that Dr. Arnold's "findings of marked and severe  
3 limitations are unsupported and contradicted by other findings in Dr. Arnold's own  
4 report, which reflect neuropsychological test findings that are mostly within  
5 normal limitations range, while no objective medical findings support the  
6 determination that the claimant suffers from marked or severe limitations." Tr. 21.  
7 In rejecting a doctor's opinion, an ALJ may cite internal inconsistencies in  
8 evaluating a doctor's report. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.  
9 2005).

10 Plaintiff asserts that the ALJ failed to realize that the MCMI-III profile in  
11 Dr. Arnold's evaluation "strongly suggests major depression and anxiety, in the  
12 form of PTSD." ECF No. 15 at 19. The ALJ did not take issue with Dr. Arnold's  
13 diagnosis, she agreed Plaintiff suffered from depression and PTSD at step two. Tr.  
14 13. Instead, the ALJ disagreed with the severity of limitations opined by Dr.  
15 Arnold. Tr. 21. Therefore, Plaintiff's assertion is misplaced. Additionally, the  
16 ALJ's finding is supported by the record. The Mental Status Exam showed a  
17 depressed/anxious mood, a marginal short term memory, and similarities  
18 considered fair, but otherwise everything was normal. Tr. 899. The MCMI-III  
19 summary suggested diagnoses, but did not speak to severity of resulting  
20 limitations. Tr. 900. Therefore, the ALJ's determination is supported by  
21 substantial evidence and meets the specific and legitimate standard.

22 Third, the ALJ found that "Dr. Arnold's findings appear in standardized  
23 check-the-box form." Tr. 21. The Ninth Circuit has expressed a preference for  
24 individualized medical opinions over check-the-box reports. *See Murray v.*  
25 *Heckler*, 722 F.2d 499, 501 (9th Cir. 1983). Here, the ALJ has already determined  
26 that there were inconsistencies between Dr. Arnold's report and his opinion  
27 contained in the check-the-box form. *See supra*. As such, this reason meets the  
28 specific and legitimate standard.

1       Fourth, the ALJ found that Plaintiff's daily activities, as reported to Dr.  
 2 Arnold, were inconsistent with Dr. Arnold's opinion of marked or severe  
 3 limitations. Tr. 21. A claimant's ADLs "may be seen as inconsistent with the  
 4 presence of a condition which would preclude all work activity," and is, therefore,  
 5 an acceptable reason to reject a physician's opinion. *Curry v. Sullivan*, 925 F.2d  
 6 1127, 1130 (9th Cir. 1991). Dr. Arnold, summarized Plaintiff's ADL as follows:

7       Mr. Downes said he was living with his parents, after moving out of his  
 8 mother-in-laws [sic] home. He attends to his personal hygiene and  
 9 attire independently. He pointed out it takes him longer to do basic  
 10 household chores, with considerable physical pain. He will commonly  
 11 do some dishes, and the laundry. He drives, but tends to isolate and not  
 grocery shop.

12      Tr. 899. As addressed above, there is no evidence to support that the activities of  
 13 attending to personal hygiene, completing household chores, and driving are  
 14 transferable to a work setting or that Plaintiff has spent a substantial part of his day  
 15 engaged in transferable skills. *See Orn*, 495 F.3d at 639; *Fair*, 885 F.2d at 603.  
 16 Therefore, the ALJ's finding, that Plaintiff's ability to attend to personal hygiene,  
 17 complete household chores, and drive, is inconsistent with Dr. Arnold's opinion of  
 18 severe and marked limitations on a mental medical source statement fails to meet  
 19 the specific and legitimate standard.

20      Fifth, the ALJ found that "Dr. Arnold saw the claimant for the first time just  
 21 five days prior to the hearing, at the request of the claimant's attorney as a [prep]  
 22 for the hearing." Tr. 21. This is not a specific and legitimate reason to reject the  
 23 opinion. *See Reddick v. Chater*, 157 F.3d 715, 726 (9th Cir. 1998) ("in the absence  
 24 of other evidence to undermine the credibility of a medical report, the purpose for  
 25 which the report was obtained does not provide a legitimate basis for rejecting it");  
 26 *Burkhart v. Bowen*, 856 F.2d 1335, 1339 (9th Cir. 1988) (the source of referral was  
 27 found to be relevant where there was no objective medical basis for the opinion);  
 28 *Saelee v. Chater*, 94 F.3d 520, 522 (9th Cir. 1996) (the source of the referral was

1 found to be relevant where the ALJ found “actual improprieties” to question the  
2 credibility of the medical report). Here, the ALJ did not conclude that there was no  
3 objective medical basis for the opinion as she concluded he had severe depression  
4 and PTSD at step two. Instead, the ALJ found the objective evidence was  
5 inconsistent with the degree of limitation opined by Dr. Arnold. Additionally, the  
6 ALJ did not find any “actual improprieties,” therefore, this is not a specific and  
7 legitimate reason to reject Dr. Arnold’s opinion.

8 Sixth, the ALJ found that “Dr. Arnold did not relate his opinion back to the  
9 alleged onset date of April 26, 2011, which is over two years prior to the hearing.”  
10 Tr. 21. While the Court acknowledges that Dr. Arnold failed to state what period  
11 the assessment covered, Tr. 901, the ALJ failed to address why this affects the  
12 weight given to Dr. Arnold’s opinion for the date it was rendered. Therefore, it  
13 does not meet the specific and legitimate standard.

14 Any error that resulted from the fourth, fifth, and sixth reasons for giving  
15 “very little weight” to Dr. Arnold’s opinion is harmless because the first three  
16 reasons are sufficient to support the conclusion. *See Tommasetti*, 533 F.3d at 1038  
17 (an error is harmless when “it is clear from the record that the . . . error was  
18 inconsequential to the ultimate nondisability determination”). Therefore, the ALJ  
19 provided adequate specific and legitimate reasons to support the weight provided  
20 to Dr. Arnold’s opinion.

## 21 CONCLUSION

22 Having reviewed the record and the ALJ’s findings, the Court finds the  
23 ALJ’s decision is supported by substantial evidence and free of harmful legal error.  
24 Accordingly, **IT IS ORDERED:**

25 1. Defendant’s Motion for Summary Judgment, **ECF No. 17**, is  
26 **GRANTED**.

27 2. Plaintiff’s Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.  
28 The District Court Executive is directed to file this Order and provide a copy

1 to counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant**  
2 and the file shall be **CLOSED**.

3 DATED January 25, 2016.



A handwritten signature in black ink, appearing to read "M".

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5 JOHN T. RODGERS  
6 UNITED STATES MAGISTRATE JUDGE

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